

Ordinance No. 06-110

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article X, Regulation of Smoking, at Section 10.03, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Sexually Oriented Businesses, Billiard Halls, Bingo Parlors and Bowling Centers, at Subsection (F)(2), relative to the posting of signs; by the amendment of Section 10.04, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required, at Subsection (B), relative to receptacles and at Subsection (D) relative to offenses; by the amendment of Section 10.06, Penalty for Violation; and by the deletion of Section 10.07, Culpability; and providing for a fine of up to \$2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective January 1, 2007

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at **Article X, Regulation of Smoking, Section 10.03, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Sexually Oriented Businesses, Billiard Halls, Bingo Parlors and Bowling Centers**, at Subsection (F)(2), so that said subsection shall be and read as follows:

2. The owner or manager of an establishment governed by this subsection commits an offense if he or she fails to post and maintain the required signs. There shall be no requirement of a culpable mental state for this offense.

Further, Article X, **Section 10.04, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required**, Subsection (B), is hereby amended so that said subsection shall be and read as follows:

- B. Receptacles. A place, establishment or conveyance regulated by Sections 10.02 or 10.03, which is partially or totally nonsmoking, shall have facilities for the

extinguishment of smoking materials located within fifty feet (50') of all entrances and within all designated smoking areas.

Further, Article X, **Section 10.04**, Subsection (D), is hereby amended so that said subsection shall be and read as follows:

D. Offenses.

1. The owner, manager or operator of a place, conveyance or establishment commits an offense if he fails to post signs and provide extinguishment facilities as required by this section. There shall be no requirement of a culpable mental state for this offense.
2. The owner, manager or operator of a place, conveyance or establishment commits an offense if he places or maintains facilities for the extinguishment of smoking materials in public areas other than as provided for in Subsection (B). There shall be no requirement of a culpable mental state for this offense.
3. The owner, manager or operator of an outdoor athletic facility, theater or amphitheater where a public address system is used, commits an offense if he operates such a facility without announcing or causing to be announced prior to each game or performance the prohibition of smoking in seating areas.

Further, Article X, **Section 10.06**, Penalty for Violation, is hereby amended so that said section shall be and read as follows:

- A. Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined an amount not less than Twenty-five and No/100 Dollars (\$25.00) nor more than Two Hundred and No/100 Dollars (\$200.00); provided, however, in the event the actor has previously been convicted under this section, the actor shall be fined an amount not less than Fifty and No/100 Dollars (\$50.00) nor more than Five Hundred and No/100 Dollars (\$500.00) for a second conviction hereunder, and shall be fined an amount not less than One Hundred and No/100 Dollars (\$100.00) nor more than Two Thousand and No/100 Dollars (\$2,000.00) for a third conviction hereunder and for each conviction thereafter. Each day that a violation is permitted to exist shall constitute a separate offense.
- B. Notwithstanding Subsection (A) above, the fine for violations of Subsections 10.03(F)(2), 10.04(D)(1) and 10.04(D)(2) or any other offense within this Article where the culpable mental state is specifically dispensed, shall be an amount not

less than One Hundred and No/100 Dollars (\$100.00) nor more than Five Hundred and No/100 Dollars (\$500.00) for a third conviction hereunder and for each conviction thereafter.

Further, Article X, is hereby amended by the **deletion** of **Section 10.07, Culpability**.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars (\$2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

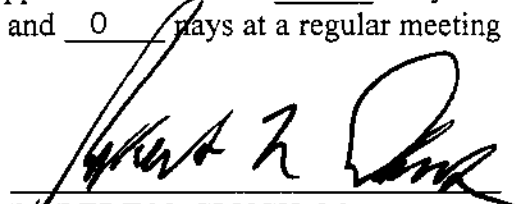
7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective January 1, 2007.

PRESENTED AND GIVEN FIRST READING on the 10th day of October, 2006, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 28th day of November, 2006, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.


ROBERT N. CLUCK, Mayor

ATTEST:


BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY 